sumers Union, 446 U.S., at 732–734, 100 S.Ct., at 1974–1976. But there is no similar constitutionally based privilege immunizing judges from being required to testify about their judicial conduct in third-party litigation. Nor has any demonstration been made that historically the doctrine of judicial immunity not only protected the judge from liability but also excused him from responding as a witness when his co-conspirators are sued. Even if the judge were excused from testifying, it would not follow that actions against private parties must be dismissed.

Of course, testifying takes time and energy that otherwise might be devoted to judi- [31] cial duties; and, if cases such as this survive initial challenge and go to trial, the judge's integrity and that of the judicial process may be at stake in such cases. But judicial immunity was not designed to insulate the judiciary from all aspects of public accountability. Judges are immune from § 1983 damages actions, but they are subject to criminal prosecutions as are other citizens. *O'Shea v. Littleton*, 414 U.S. 488, 503, 94 S.Ct. 669, 679, 38 L.Ed.2d 674 (1974). Neither are we aware of any rule generally exempting a judge from the normal obligation to respond as a witness when he has information material to a criminal or civil proceeding.[7] Cf. *United States v. Nixon*, 418 U.S. 683, 705–707, 94 S.Ct. 3090, 3106–07, 41 L.Ed.2d 1039 (1974).

[8] Judicial immunity arose because it was in the public interest to have judges who were at liberty to exercise their independent judgment about the merits of a case without fear of being mulcted for damages should an unsatisfied litigant be able to convince another tribunal that the judge acted not only mistakenly but with malice and corruption. *Pierson v. Ray, supra*, at 554, 87 S.Ct., at 1217–1218; *Bradley v. Fisher*, 13 Wall., at 349, 350 n. In terms of undermining a judge's independence and his judicial performance, the concern that his conduct will be examined in a collateral proceeding against those with whom he allegedly conspired, a proceeding in which he cannot be held liable for damages and which he need not defend, is not of the same order of magnitude as the prospects of being a defendant in a damages action from complaint to verdict with the attendant possibility of being held liable for damages if the factfinder mistakenly upholds the charge of malice or of a corrupt conspiracy with others. These concerns are not insubstantial, either for the judge or for the public, but we agree with the Court of Appeals that the potential harm to the public from denying immunity to private co-conspirators is outweighed by the benefits [32] of providing a remedy against those private persons who participate in subverting the judicial process and in so doing inflict injury on other persons.

The judgment of the Court of Appeals is *Affirmed*.

7. Whether the federal courts should be especially alert to avoid undue interference with the state judicial system flowing from demands upon state judges to appear as witnesses need not be addressed at this time.

449 U.S. 33, 66 L.Ed.2d 193

ALLIED CHEMICAL CORPORATION et al.,

v.

DAIFLON, INC.

No. 79-1895.

Nov. 17, 1980.

Following grant of new trial in favor of defendants in antitrust action, plaintiff sought mandamus. The Court of Appeals for the Tenth Circuit, 612 F.2d 1249, issued the writ and defendant sought certiorari. The Supreme Court held that: (1) only ex-

ceptional circumstances amounting to a judicial usurpation of power would justify invocation of mandamus; (2) because of the ability to challenge the grant of new trial on a direct appeal after final judgment, it cannot be said that litigant has no other adequate means to seek the relief desired; (3) authority to grant a new trial was confided almost entirely to exercise of discretion on part of the trial court; and (4) where matter is committed to discretion, it cannot be said that a litigant's right to particular result is clear and undisputable.

Reversed.

Justice Blackmun dissented and filed an opinion in which Justice White joined.

1. Federal Courts ⇐596

Order granting a new trial is interlocutory in nature and therefore not immediately appealable.

2. Mandamus ⇐1

Remedy of mandamus is a drastic one, to be invoked only in extraordinary situations.

3. Mandamus ⇐26

Only exceptional circumstances, amounting to a judicial usurpation of power, justify the invocation of mandamus.

4. Mandamus ⇐50

Trial court's ordering of a new trial will rarely, if ever, justify the issuance of a writ of mandamus.

5. Mandamus ⇐4(3)

Because litigant is free to seek review of grant of new trial on direct appeal after a final decision has been entered, the litigant has an adequate remedy other than mandamus to challenge the issuance of the order for new trial.

6. Federal Civil Procedure ⇐2313

Authority to grant a new trial is confided almost entirely to the exercise of discretion on the part of the trial court.

7. Mandamus ⇐50

Where matter is committed to the discretion of trial court, such as the decision to grant a new trial, it cannot be said that the litigant's right to a particular result on a motion for new trial is clear and indisputable so as to justify writ of mandamus.

PER CURIAM.

Respondent, Daiflon, Inc., is a small importer of refrigerant gas that brought an antitrust suit against all domestic manufacturers of the gas. Petitioner E. I. du Pont de Nemours & Co. was accused of monopolizing the industry in violation of § 2 of the Sherman Act, 15 U.S.C. § 2. All petitioners were accused of conspiring to drive respondent out of business in violation of § 1 of the Sherman Act, 15 U.S.C. § 1.

After a 4–week trial, the jury returned a verdict for the respondent and awarded $2.5 million in damages. In a subsequent oral order, the trial court denied petitioners' motion for a judgment notwithstanding the verdict, but granted a motion for new trial. The trial court acknowledged in its oral order that it had erred during trial in certain of its evidentiary rulings and that the evidence did not support the amount of the jury award.

Respondent then filed a petition for a writ 134
of mandamus with the Court of Appeals for the Tenth Circuit, 612 F.2d 1249, requesting that it instruct the trial court to reinstate the jury verdict. The Court of Appeals, without a transcript of the trial proceedings before it,[1] issued a writ of mandamus directing the trial court to restore the jury verdict as to liability but permitting the

1. The Court of Appeals did request that each party prepare a summary of the evidence presented in the trial court. The petitioners objected to this procedure which substituted a summary prepared by each party in lieu of the trial transcript. The court acknowledged in its opinion that the summary eventually filed by the petitioners only summarized the testimony of one witness and that the court was unaware of the identity of, or the testimony given by, the petitioners' other witness.

trial court to proceed with a new trial on damages. *Daiflon, Inc. v. Bohanon*, 612 F.d 1249. Petitioners seek review of this action of the Court of Appeals by their petition for certiorari with this Court.

[1] An order granting a new trial is interlocutory in nature and therefore not immediately appealable. The question presented by this petition is therefore whether a litigant may obtain a review of an order concededly not appealable by way of mandamus. If such review were permissible then the additional question would be presented as to whether the facts in this particular case warrant the issuance of the writ.

[2] It is not disputed that the remedy of mandamus is a drastic one, to be invoked only in extraordinary situations. *Will v. United States*, 389 U.S. 90, 95, 88 S.Ct. 269, 273, 19 L.Ed.2d 305, (1967); *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 382–385, 74 S.Ct. 142, 149, 98 L.Ed. 106, (1953); *Ex parte Fahey*, 332 U.S. 258, 259, 67 S.Ct. 1558, 1559, 91 L.Ed. 2041, (1947). On direct appeal from a *final* decision, a court of appeals has broad authority to "modify, vacate, set aside or reverse" an order of a district court, and it may direct such further action on remand "as may be just under the circumstances." 28 U.S.C. § 2106. By contrast, under the All Writs Act, 28 U.S.C. § 1651(a), courts of appeals may issue a writ of mandamus only when "necessary or appropriate in aid of their
135 respective jurisdictions." Although a simple showing of error may suffice to obtain a reversal on direct appeal, to issue a writ of mandamus under such circumstances "would undermine the settled limitations upon the power of an appellate court to review interlocutory orders." *Will v. United States, supra*, at 98, n.6, 88 S.Ct., at 275, n.6.

[3] This Court has recognized that the writ of mandamus "has traditionally been used in the federal courts only 'to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.'" *Will v. United States, supra*, 389 U.S., at 95, 88 S.Ct., at 273, quoting *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26, 63 S.Ct. 938, 941, 87 L.Ed. 1185 (1943). Only exceptional circumstances, amounting to a judicial usurpation of power, will justify the invocation of this extraordinary remedy. *Will v. United States, supra*, at 95, 88 S.Ct., at 273.

The reasons for this Court's chary authorization of mandamus as an extraordinary remedy have often been explained. See *Kerr v. United States District Court*, 426 U.S. 394, 402–403, 96 S.Ct. 2119, 2123–2124, 48 L.Ed.2d 725 (1976). Its use has the unfortunate consequence of making a district court judge a litigant, and it indisputably contributes to piecemeal appellate litigation. It has been Congress' determination since the Judiciary Act of 1789 that as a general rule appellate review should be postponed until after final judgment has been rendered by the trial court. A judicial readiness to issue the writ of mandamus in anything less than an extraordinary situation would "run the real risk of defeating the very policies sought to be furthered by that judgment of Congress." *Id.*, at 403, 96 S.Ct., at 2124. In order to insure that the writ will issue only in extraordinary circumstances this Court has required that a party seeking issuance have no other adequate means to attain the relief he desires, *ibid.*; *Roche v. Evaporated Milk Assn., supra*, 319 U.S., at 26, 63 S.Ct., at 941, and that he satisfy the "burden of showing that [his] right to issuance of the writ is 'clear and indisputable.'" *Bankers Life & Cas. Co. v. Holland, supra*, 346 U.S., at 384, 74 S.Ct., at 148, quoting *United States v. Duell*, 172 136
U.S. 576, 582, 19 S.Ct. 286, 287, 43 L.Ed. 559 (1899). In short, our cases have answered the question as to the availability of mandamus in situations such as this with the refrain: "What never? Well, *hardly* ever!"

[4–7] A trial court's ordering of a new trial rarely, if ever, will justify the issuance of a writ of mandamus. On the contrary, such an order is not an uncommon feature